

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

THE CITY OF HUNTINGTON,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, *et al.*

Defendants.

Civil Action No. 3:17-01362

CABELL COUNTY COMMISSION,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, *et al.*

Defendants.

Civil Action No. 3:17-01665

**DEFENDANTS' NOTICE
OF CONSENT TO A BENCH TRIAL**

At the January 27, 2020 status conference, Plaintiffs proposed that they would dismiss their claims for punitive damages and that these actions would be tried by the Court rather than by a jury. Defendants responded that they were not prepared to waive their jury trial right at that time but would continue to consider the issue. Plaintiffs subsequently memorialized, in a letter to defense counsel, their offer to dismiss their punitive damages claims with prejudice if

Defendants would consent to a bench trial. Dkt. No. 267-1 (Letter from Paul Farrell, Jr., to defense counsel (Feb. 4, 2020)).¹

For the reasons set forth in defendants' memorandum in support of a jury trial (Dkt. No. 152), Defendants have a Seventh Amendment right to a jury trial. After further consideration, however, Defendants now consent to waive their right to a jury trial and accept Plaintiffs' proposal that Plaintiffs' punitive damages claims be dismissed with prejudice and that the remaining claims be tried by the Court.² Defendants' consent in this regard does not alter the time that will be required for discovery, motions practice, and other matters that must be completed before trial, as explained in Defendants' proposed case management order and the memorandum in support thereof (Dkt. Nos. 157–58).

Dated: March 4, 2020

Respectfully submitted,

/s/ Michael W. Carey

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¹ ECF document numbers used herein refer to the *City of Huntington* action, which has been administratively designated the lead action in this litigation, with the exception of the citation to Mr. Farrell's letter. The letter was filed in the *Cabell County Commission* action, where it is ECF document 267-1, but does not appear to have been filed in the *City of Huntington* action.

² The remaining claim is public nuisance, along with civil conspiracy, which is a theory of liability associated with the public nuisance claim rather than a distinct cause of action. Defendants contest that joint liability is a cause of action.

/s/ Steven R. Ruby

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this 4th day of March, the foregoing
“**Defendants’ Notice of Consent to a Bench Trial**” was served using the Court’s CM/ECF
system, which will send notification of such filing to all counsel of record.

/s/ Michael W. Carey
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